

## Chapter NR 115

### WISCONSIN'S SHORELAND PROTECTION PROGRAM

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**NR 115.01 Purpose.** (1) Section 59.692, Stats., requires counties to adopt zoning ordinances for the protection of all shorelands in unincorporated areas, and provides that if the department determines, after notice and hearing, that a county has not adopted a shoreland zoning ordinance by January 1, 1968, or that a county has adopted an ordinance which fails to meet minimum shoreland zoning standards that have been promulgated under s. 59.692, Stats., to accomplish the shoreland protection objectives found in s. 281.31, Stats., the department is to adopt a shoreland zoning ordinance to be administered by that county.

(2) Section 281.31, Stats., provides that shoreland subdivision and zoning regulations shall: “further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structure and land uses and reserve shore cover and natural beauty.”

(3) It is the responsibility of the department, in the discharge of its mandate under ss. 59.692 and 281.31, Stats., to require adherence to specific standards and criteria for navigable water protection regulations and their administration. Section 281.31, Stats., provides that: “Such standards and criteria shall give particular attention to safe and healthful conditions for the enjoyment of aquatic recreation; the demands of water traffic, boating and water sports; the capability of the water resource; requirements necessary to assure proper operation of septic tank disposal fields near navigable waters; building setbacks from the water; preservation of shore growth and cover; conservancy uses for low lying lands; shoreland layout for residential and commercial development; suggested regulations and suggestions for the effective administration and enforcement of such regulations.”

(4) In order to meet the shoreland protection objectives found in s. 281.31, Stats., and to adequately protect local resources, counties may adopt more protective shoreland zoning and subdivision regulations than are required by the minimum standards in this chapter, including waterway classification systems.

**NR 115.02 Applicability.** (1) The provisions of this chapter are applicable to county regulation of the use and development of unincorporated shoreland areas, and the regulation of previously unincorporated shoreland areas that were annexed by a city or village after May 7, 1982 or incorporated as a city or village after April 30, 1994. References in this chapter to counties, or county government agencies, shall be read to apply to cities and villages, or city and village agencies, when this chapter is applied to annexed or incorporated areas in situations where s. 59.692 (7), Stats., requires that shoreland zoning is to continue in effect.

(2) Unless specifically exempted by law, all cities, villages, towns and counties are required to comply with, and obtain all necessary permits under, local shoreland zoning ordinances.

(3) State agencies are required to comply with, and obtain all necessary permits under, local shoreland zoning ordinances if s. 13.48 (13), Stats., requires compliance with local zoning.

**NOTE:** Section 13.48 (13), Stats., requires compliance with the zoning ordinances of “the municipality in which construction takes place” for “every building, structure or facility that is constructed for the benefit of or use of the state, any state agency, board, commission or department.” However, the Wisconsin Attorney General has issued an opinion that the Department of Natural Resources is not subject to local zoning ordinances with respect to its construction of any building, structure or facility whose purpose is to assure the general public access to outdoor recreation areas, rather than to facilitate the internal operations of the Department as a state agency. 81 OAG 56 (OAG 9-93, June 30, 1993)

(4) The construction, reconstruction, maintenance and repair of state highways and bridges, carried out under the direction and supervision of the Wisconsin department of transportation are not subject to local shoreland zoning ordinances, if s. 30.12 (4)(a), Stats., applies.

**NR 115.03 Definitions.** For the purpose of this chapter:

(1) “Access site” means a parcel of land providing public boat access or carry-in access.

(2) “Accessory structure” means a subordinate structure, the use of which is incidental to, and customarily found in connection with, the principal structure or use of the property. Accessory structures include, but are not limited to, detached garages, sheds, barns, gazebos, patios, decks (both detached and attached), swimming pools, hot tubs, fences, retaining walls, driveways, parking lots, sidewalks, detached stairways and lifts.

(3) “Agricultural practice” has the meaning found in s. 281.16 (1)(b), Stats.

**NOTE:** Section 281.16 (1)(b), Stats., defines “agricultural practice” to mean “beekeeping; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; grazing; livestock raising; orchards; poultry raising; raising of grain, grass, mint and seed crops; raising of fruits, nuts and berries; sod farming; placing land in federal programs in return for payments in kind; owning land, at least 35 acres of which is enrolled in the conservation reserve program under 16 USC 3831 to 3836; and vegetable raising.”

(4) “Campground” means a parcel of land, regardless of whether it is publicly or privately owned, that is developed, maintained or used for the purpose of providing campsites for permanent and non-permanent use.

(5) “Camping unit” means a portable enclosure used as a temporary shelter for human habitation that consists of a tent, tent trailer, travel trailer, pickup truck enclosure, van, bus or other mobile recreational vehicle.

(6) “Compliant building location” means an area on a lot where a building could be located in compliance with all applicable ordinance requirements.

(7) “Conditional use (or special exception)” means a use that is specifically listed in a shoreland zoning ordinance as either a conditional use or special exception and that may only be permitted if the board of adjustment, the county zoning agency, or the county board, as authorized by county ordinance, determines that the conditions specified in the shoreland zoning ordinance for that use are satisfied.

(8) "Conservation area" means an area within a lot, a combination of lots or a subdivision that is generally contiguous, where the land use is restricted by a permanent conservation easement that complies with the requirements of s. 700.40, Stats.

(9) "County zoning agency" means the committee or commission created or designated by the county board under s. 59.69 (2)(a), Stats., to act in matters pertaining to county planning and zoning.

(10) "Dam" means any artificial barrier in or across a watercourse that has the primary purpose of impounding or diverting water. A dam includes all appurtenant works, such as a dike, canal or powerhouse.

(11) "Department" means the Wisconsin department of natural resources.

(12) "Disabled" means having a physical or mental impairment that substantially limits one or more major life activities.

(13) "Duplex" means a single structure containing two dwelling units.

(14) "Dwelling unit" has the meaning found in s. 106.50 (1m)(i), Stats.

**NOTE:** Section 106.50 (1m)(i), Stats., defines "dwelling unit" to mean "a structure or that part of a structure that is used or intended to be used as a home, residence or sleeping place by one person or by 2 or more persons, who are maintaining a common household, to the exclusion of all others."

(15) "Earth-tone" means colors that harmonize with the natural surroundings during the summer months.

**Note:** Earth-tone includes shades of brown, green, and gray, such as those colors found in the lower Wisconsin riverway standardized colorization chart.

(16) "Expansion" means an addition to an existing structure regardless of whether the addition is horizontal, vertical or both.

(17) "Filtered view" means that one can see the water through the vegetation, while any structure remains visually inconspicuous.

(18) "Floodplain" means the land that has been or may be hereafter covered by flood water during the regional flood. The regional flood is based upon a statistical analysis of stream flow records available for the watershed or an analysis of rainfall and runoff characteristics in the general watershed region, or both. The flood frequency of the regional flood is once in every 100 years. In any given year, there is a 1% chance that the regional flood may occur.

(19) "Footprint" means the land area covered by a structure at ground level, measured on a horizontal plane, including the area occupied by roof overhangs. The "footprint" of a residence includes attached garages and porches, but excludes decks, patios and carports.

(20) "Forest land" means any property on which trees exist, standing or fallen, alive or dead, that are primarily grown because they are valuable for forest products, watershed or wildlife protection or non-residential recreational uses in contrast to property where shade or ornamental trees are grown primarily because they are valuable for landscape, aesthetic, agricultural or similar purposes.

**NOTE:** A parcel of land need not be designated as managed forest land under ss. 77.80 to 77.91, Stats., or be enrolled in any other forest management program to be considered "forest land."

(21) "Forest management activities" means actions taken on forest land to establish, maintain or enhance a forest including, but not limited to, planting trees, thinning and trimming trees, and harvesting timber and other forest products.

(22) "Foundation" means the underlying constructed base of a building or other structure, including but not limited to pillars, footings, timber posts, concrete slabs and concrete and masonry walls.

(23) "Human habitation" means the use of a building or other structure for human occupancy, including but not limited to cooking, eating, bathing, and sleeping.

(24) "Impervious surface" means an area that releases as runoff all or a large portion of the precipitation that falls on it, other than frozen soil. Examples of surfaces that typically are impervious are any paved, covered, compacted or structural surface that limits or impedes infiltration or causes additional runoff of surface water including, but are not limited to, the roofs of buildings and the surfaces of decks, patios, and gravel, crushed stone and paved driveways, parking areas and walkways.

(25) "Land disturbing activity" means any man-made alteration of the land surface resulting in a change in topography, existing vegetation or non-vegetative soil cover. Land disturbing activity includes filling and grading activities, the clearing and grubbing of vegetation, building foundation demolition, excavating, and pit trench dewatering.

(26) "Levee" means a continuous dike or embankment of earth constructed to prevent the flooding of certain areas of land.

(27) "Lift" means a mechanical device, either temporary or permanent, containing a mobile open top car, including hand or guard rails, a track upon which the open top car moves, and a mechanical device, which may or may not be motorized, to provide power to the open top car.

(28) "Lot" means a contiguous parcel of land with described boundaries that abuts, or has access via an easement or areas of common ownership to, a public street or road.

**NOTE:** For the purpose of the implementing this chapter, the area of a lot does not include any land lying in a public right-of-way or any portion of the bed of a navigable body of water, as provided under s. NR 115.07 (1)(b).

(29) "Manufactured home" means a building that is designed to be used as a dwelling unit, is constructed or partially constructed off-site and is transported to a site where it is used as a home, with or without a permanent foundation, when connected to required utilities.

**NOTE:** The term "manufactured home" includes, but is not limited to, homes that are built entirely in a factory in compliance with the federal manufactured home construction and safety standards administered by the U.S. Department of Housing and Urban Development; modular, panelized, and pre-cut homes that are partially built in a factory in compliance with state building codes and are transported to the site to be assembled; and mobile homes.

(30) "Mitigation" means action taken to minimize the adverse impacts of development. Mitigation includes, but is not limited to, the installation of vegetative buffers, the removal of nonconforming structures from the shoreland buffer area, and the implementation of best management practices for erosion control or stormwater management.

(31) "Mobile recreational vehicle" means a vehicle that is used as a recreational dwelling unit and is self-propelled or capable of being carried or towed by another vehicle; is licensed for highway use, if licensing is required; and is always capable of being driven, carried or towed. Manufactured homes that are towed or carried onto a parcel of land, but do not remain capable of

being towed or carried at all times, including park model homes, do not fall within the definition of "mobile recreational vehicle."

(32) "Multiple family residence" means a single structure that contains 3 or more dwelling units.

(33) "Natural areas management activities" means actions taken to establish, maintain or enhance native plant communities or fish or wildlife habitat including, but not limited to, forest management activities, prairie restoration, wetland restoration and removal of exotic species.

(34) "Navigable waters" has the meaning found in s. 281.31, Stats.

**NOTE:** Section 281.31 (2)(d), Stats., defines "navigable water" or "navigable waters" to mean "Lake Superior, Lake Michigan, all natural inland lakes within this state and all streams, ponds, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of the boundary waters, which are navigable under the laws of this state."

Section 281.31 (2m), Stats., also provides that, notwithstanding any other provision of law or administrative rule, a shoreland zoning ordinance required under s. 59.692, Stats., "does not apply to lands adjacent to farm drainage ditches if:

- (a) Such lands are not adjacent to a natural navigable stream or river;
- (b) Those parts of the drainage ditches adjacent to these lands were nonnavigable streams before ditching; and
- (c) Such lands are maintained in nonstructural agricultural use."

(35) "Net project area" means the developable land area on a lot which excludes floodways, road rights-of-way, wetlands, shoreland buffer areas, and the beds of navigable waters.

(36) "Nonconforming structure" means a building or other structure whose location, dimensions or other physical characteristics do not conform to the standards in the current shoreland zoning ordinance but which was legally constructed or placed in its current location prior to the adoption of the ordinance or ordinance amendment that made it nonconforming.

(37) "Nonconforming use" means the use of a building, other structure or premises that does not conform to the land use restrictions in the current shoreland zoning ordinance but which was legally established prior to the adoption of the ordinance or ordinance amendment that made it nonconforming.

(38) "Ordinary high-water mark" means the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic.

(39) "Ordinary maintenance and repair" means any work done on a nonconforming structure that does not constitute expansion, structural alteration or reconstruction and does not involve the replacement, alteration, removal or improvement of any portion of the structure's foundation. The term "ordinary maintenance and repair" includes roof maintenance and replacement.

(40) "Pier" has the meaning that is found in s. 30.01 (5), Stats.

**NOTE:** Section 30.01 (5), Stats., defines "pier" to mean "any structure extending into navigable waters from the shore with water on both sides, built or maintained for the purpose of providing a berth for watercraft or for loading or unloading cargo or passengers onto or from watercraft. Such a structure may include a boat shelter which is removed seasonally. Such a structure may include a boat hoist or boat lift, and the hoist or lift may be permanent or may be removed seasonally."

(41) "Planned unit development" means a development that is characterized by compact lots where the natural features of the land are maintained to the extent possible, regardless of the number or size of the lots created.

(42) "Porch" means a building walkway or seating area with a roof over it, providing access to a building entrance.

(43) "Primary buffer" means a vegetated buffer strip running parallel to the ordinary high-water mark, and extending inland from the ordinary high-water mark.

(44) "Principal structure" means the main building or other structure on a lot, including building appurtenances such as an attached garage or porch, which is utilized for the property's principal use.

(45) "Professional natural resource manager" means a person with a college degree in a field of study related to natural resource management, or equivalent work experience, who is employed as a natural resource manager or who advises clients on natural resource management issues.

(46) "Reasonable accommodation" means allowing a disabled person to deviate from the strict requirements of the county's zoning ordinances if an accommodation is necessary and reasonable, in order not to unlawfully discriminate against the disabled person and to allow them equal housing opportunity.

**NOTE:** Federal courts have interpreted the "reasonable accommodations" requirement in the Federal Fair Housing Act to mean that an accommodation is reasonable "if it does not cause any undue hardship or fiscal or administrative burdens on the municipality, or does not undermine the basic purpose that the zoning ordinance seeks to achieve." *Oxford House, Inc. v. Town of Babylon*, 819 F. Supp. 1179, 1186 (E.D.N.Y. 1993)

(47) "Reconstruction" means the rebuilding or replacement of all or substantially all of the components of a structure other than the foundation.

(48) "Secondary buffer" means a vegetated buffer strip extending inland from the primary buffer.

(49) "Selective cutting" means the removal of selected trees and shrubs throughout the range of sizes at regular intervals, either singly or in small groups, leaving a uniform distribution of trees and shrubs.

(50) "Shoreland buffer area" means the area of land encompassing the primary buffer, the secondary buffer, and the shoreland setback area.

(51) "Shoreland setback area" has the meaning found in s. 59.692 (1)(bn), Stats.

**NOTE:** Section 59.692 (1)(bn), Stats., defines "shoreland setback area" to mean "an area in a shoreland that is within a certain distance of the ordinary high-water mark in which the construction or placement of buildings or structures has been limited or prohibited under an ordinance enacted under this section."

(52) "Shorelands" has the meaning found in s. 59.692 (1)(b), Stats.

**NOTE:** Section 59.692 (1)(b), Stats., defines "shorelands" to mean "the area within the following distances from the ordinary high-water mark of navigable waters, as defined under s. 281.31 (2)(d):

1. One thousand feet from a lake, pond or flowage. If the navigable water is a glacial pothole lake, this distance shall be measured from the high-water mark of the lake.

2. Three hundred feet from a river or stream or to the landward side of the floodplain, whichever distance is greater.”

(53) “Shoreland-wetland zoning district” means a zoning district, created in compliance with the requirements of s. NR 115.07, comprised of shorelands that are designated as wetlands on Wisconsin wetland inventory maps prepared by the department.

(54) “Single family residence” means a single structure containing a single dwelling unit.

(55) “Special zoning permission” means permission granted by a county, in a situation where the criteria in s. 59.692 (1v), Stats., are satisfied, to allow the construction or placement of an open-sided or screened structure, such as a gazebo, deck, patio or screen house, within the shoreland setback area.

(56) “Structural alteration” means the replacement or alteration of one or more of the structural components of a structure’s exterior walls.

(57) “Structural component” means any part of the framework of a building or other structure. The structural components of a structure’s exterior walls include the vertical studs, top and bottom plates, and window and door sills and headers. A structural component may be non-load-bearing, such as the framework of a wall at the gable end of a one-story house. Wall-coverings, such as siding on the exterior and dry wall on the interior, are not included in the definition of “structural component.”

(58) “Structure” means any man-made object with form, shape and utility, that is constructed or otherwise erected, attached to or permanently or temporarily placed, either upon the ground, a river bed, stream bed or lake bed or upon another structure. For the purposes of this chapter, the term “structure” includes swimming pools, hot tubs, patios, decks and retaining walls, but does not include landscaping or earthwork including graded areas, filled areas, ditches, berms, or earthen terraces. The term “structure” does not include small objects that are easily moved by hand, such as lawn chairs, portable grills, portable picnic tables, temporary fences to prevent animal herbivory, bird feeders, birdhouses and birdbaths.

(59) “Substandard lot” means a lot with dimensions that do not conform to all of the requirements of the county shoreland zoning ordinance.

(60) “Variance” means an authorization granted by the board of adjustment to construct, alter or use a building or other structure or use a parcel of land in manner that deviates from the requirements of a shoreland zoning ordinance.

(61) “Viewing and access corridor” means a vegetated strip of land extending through the primary buffer that provides a filtered view of the water and pedestrian access to the waterfront.

(62) “Visually inconspicuous” means difficult to be seen, or not readily noticeable, in summer months as viewed from any point on the water.

(63) “Wetland” has the meaning found in s 23.32 (1), Stats.

**NOTE:** Section 23.32 (1), Stats., defines “wetland” to mean “an area where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions.”

**NR 115.05 Shoreland zoning districts and land division regulations. (1)**  
ESTABLISHMENT OF APPROPRIATE ZONING DISTRICTS. Each county shall adopt a shoreland zoning ordinance that establishes, at a minimum, a shoreland-wetland zoning district

that is regulated in compliance with the requirements in s. NR 115.07. If a county chooses to establish other types of land use districts in shorelands (such as general purpose, agricultural, industrial, commercial, residential, recreational, or conservancy districts), such districts shall be established in, or incorporated by reference into, the county's shoreland zoning ordinance adopted under s. 59.692, Stats.

**NOTE:** Section 56.692 (5), Stats., provides that an ordinance enacted under s. 59.692, Stats., supersedes all provisions of an ordinance enacted under s. 59.69, Stats., that relate to shorelands, which means that land use districts established in a comprehensive county zoning ordinance adopted under s. 59.69, Stats., will only apply in shorelands if those districts are also established in the county's shoreland zoning ordinance adopted under s. 59.692, Stats. However, county construction site erosion control and storm water management zoning ordinances adopted under s. 59.693, Stats., are not superseded by an ordinance enacted under s. 59.692, Stats.

(2) **LAND DIVISION REGULATIONS.** Each county shall adopt shoreland land division regulations in the county's shoreland zoning ordinance that require county review and approval of all divisions of land in shorelands that create one or more lots that are 20 acres in size or smaller. These shoreland land division regulations may incorporate by reference the requirements of ch. 236, Stats., for subdivisions, as that term is defined in s. 236.02 (12), Stats., or may adopt more restrictive regulations under the authority of s. 236.45, Stats. At a minimum, the shoreland land division regulations required under this section shall require that all new lots that are created in shorelands will comply with the net project area requirements in sub. (3), the restriction in sub. (4) and the minimum lot size requirements in s. NR 115.09.

(3) **NET PROJECT AREA.** At the time of the mapping or platting of a new land division, all lots that are created in the shorelands area on which structural development is allowed shall have at least 5,000 square feet of land upon which a building or other structure could be built. The area that is identified to satisfy this net 5,000 square feet project area requirement may not include any land in a wetland or floodway, in the shoreland buffer area, in a public right-of-way, or on the bed of a navigable body of water. The net project area shall be shown on the map or plat that creates the lot.

(4) **NAVIGABLE BODIES OF WATER WITHIN LOTS.** At the time of the mapping or platting of a new land division, no portion of any parcel that is one and one-half acres in size or smaller and on which structural development is allowed in the shorelands area may be divided from the rest of the lot by a navigable body of water.

**NR 115.07 Establishment and regulation of shoreland-wetland zoning districts. (1)**  
**COUNTY REVIEW OF PRELIMINARY WETLAND INVENTORY MAPS.** Before the department prepares final Wisconsin wetland inventory maps:

(a) The department shall transmit to the county zoning agency copies of preliminary wetland inventory maps for that county.

(b) The county zoning agency shall have 90 days to review the preliminary maps unless the review period is extended by written approval of the department, but in no case shall the review period extend for more than 180 days.

(c) The county zoning agency shall hold a public hearing to solicit public comments on the preliminary wetland inventory maps. Notice of the time and place of the hearing shall be mailed to the town clerk of each town in the county and shall be published as a class 1 notice, under ch. 985, Stats.

(d) On or before the last day of the review period, the county zoning agency shall return the preliminary maps to the department. If the county zoning agency believes that the preliminary



maps are inaccurate, discrepancies shall be noted on the maps with an accompanying narrative explaining the problem areas.

(e) The department shall schedule a meeting with the county zoning agency within 30 days of the return of the preliminary maps if the county zoning agency has indicated that they believe that there are inaccuracies on the maps.

(f) After meeting with the county zoning agency to discuss apparent map inaccuracies, the department shall, at department expense, consult available soil survey maps and conduct on-site inspections, if appropriate, in order to evaluate the county recommendations, and shall then prepare the final Wisconsin wetland inventory maps for that county.

(g) The adoption of a final Wisconsin wetland inventory map is a final decision of the department and may be reviewed as provided in ch. 227, Stats.

(2) COUNTY ADOPTION OF SHORELAND-WETLAND ZONING. (a) Each county shall, within 6 months after receipt of final Wisconsin wetland inventory maps, or Wisconsin wetland inventory map amendments, for that county from the department, zone all shorelands within the county that are designated as wetlands on the Wisconsin wetland inventory maps, in a shoreland-wetland zoning district.

(b) Ordinance text and map amendments creating shoreland-wetland zoning districts shall be referred to the county zoning agency for public hearing as required by s.59.69 (5)(e) 2., Stats.

(c) The appropriate regional office of the department shall be provided with a copy of the proposed text and map amendments and with written notice of the public hearing at least 10 days prior to such hearing.

(3) PERMITTED USES IN SHORELAND-WETLAND ZONING DISTRICTS. Within shoreland-wetland zoning districts, counties may permit, prohibit or authorize as a conditional use the following uses subject to the general requirements of ss. NR 115.05 to 115.13, the provisions of chs. 30 and 31, Stats., and other state and federal laws, if applicable:

(a) Hiking, fishing, trapping, hunting, swimming and boating.

(b) The harvesting of wild crops, such as marsh hay, ferns, moss, wild rice, berries, tree fruits and tree seeds, in a manner that is not injurious to the natural reproduction of such crops and that does not involve filling, flooding, draining, dredging, ditching, tiling or excavating.

(c) The practice of silviculture, including the planting, thinning and harvesting of timber, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done except as required to construct and maintain roads which are necessary to conduct silviculture activities, which cannot as a practical matter be located outside the wetland, and which are designed and constructed to minimize the adverse impact upon the natural functions of the wetland, or except as required for temporary water level stabilization measures to alleviate abnormally wet or dry conditions which would have an adverse impact on the conduct of silvicultural activities if not corrected.

**NOTE:** Local units of government, in the development and application of ordinances which apply to shoreland areas, must consider other programs of statewide interest and other state regulations affecting the lands to be regulated, i.e. regulations and management practices applicable to state and county forests and lands entered under the forest cropland program in subchapter I of ch. 77, Stats., and the managed forest lands program in subchapter VI of ch. 77, Stats.

(d) The pasturing of livestock and the construction and maintenance of fences, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done.

(e) The cultivation of agricultural crops if cultivation can be accomplished without filling, flooding or artificial drainage of the wetland through ditching, tiling, dredging or excavating except that flooding, dike and dam construction, and ditching shall be allowed for the purpose of growing and harvesting cranberries. The maintenance and repair of existing drainage systems (such as ditching and tiling) shall be permitted. The construction and maintenance of roads shall be permitted if the roads are necessary for agricultural cultivation, cannot as a practical matter be located outside the wetland, and are designed and constructed to minimize the adverse impact upon the natural functions of the wetland.

(f) The construction and maintenance of duck blinds provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done.

(g) The construction and maintenance of nonresidential structures used solely in conjunction with the raising of waterfowl, minnows, or other wetland or aquatic animals, or used solely for some other purpose which is compatible with wetland preservation if such building cannot as a practical matter be located outside the wetland, not to exceed 500 square feet, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done.

(h) The construction and maintenance of piers, docks and walkways, including those built on pilings, provided that no filling, flooding, dredging, draining, ditching, tiling or excavating is done.

(i) The establishment and development of public and private parks and recreation areas, boat access sites, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game preserves and private wildlife habitat areas, provided that no filling is done and that any private wildlife habitat area is used exclusively for that purpose. The owner or operator of a new private recreation or wildlife area to be located in a shoreland-wetland zoning district shall be required to notify the county zoning agency of the proposed project before beginning construction. Ditching, excavating, dredging, dike and dam construction shall be allowed in wildlife refuges, game preserves, and private wildlife habitat areas for the purpose of improving wildlife habitat or to otherwise enhance wetland values.

(j) The construction and maintenance of electric, gas, telephone, water and sewer transmission and distribution lines, and related facilities, which cannot as a practical matter be located outside the wetland, provided that any filling, excavating, ditching or draining necessary for such construction or maintenance is done in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the wetland.

**NOTE:** Major electrical generating facilities and high-voltage transmission lines that have obtained a certificate of public convenience and necessity under s. 196.491, Stats., are not subject to the requirements of local ordinances.

(k) The construction and maintenance of railroad lines which cannot as a practical matter be located outside the wetland, provided that any filling, excavating, ditching or draining necessary for such construction or maintenance is done in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the wetland.

(l) The maintenance, repair, replacement, and reconstruction of existing town and county highways and bridges.

(4) PROHIBITED USES IN SHORELAND-WETLAND ZONING DISTRICTS. Any use not permitted in sub. (3) is prohibited in a shoreland-wetland zoning district unless the wetland or

portion thereof is rezoned by amendment of the county shoreland zoning ordinance in accordance with s. 59.69 (5)(e), Stats., and the procedures outlined in sub. (5).

(5) REZONING OF SHORELAND-WETLAND ZONING DISTRICTS. (a) Official ordinance amendments are required for any change in shoreland-wetland zoning. Such amendments shall be made upon petition in accordance with provisions of s. 59.69 (5)(e), Stats.

(b) The county clerk shall submit a copy of every petition for an amendment to a shoreland-wetland zoning district to the appropriate regional office of the department within 5 days of the filing of such petition with the clerk.

(c) All proposed text and map amendments to shoreland-wetland zoning districts shall be referred to the county zoning for a public notice and hearing as required by s. 59.69 (5)(e) 2., Stats. The appropriate district regional office of the department shall be provided with written notice of the public hearing at least 10 days prior to such hearing.

(d) In order to ensure that the shoreland protection objectives found in s. 281.31, Stats., will be accomplished by the county shoreland zoning ordinance, a county shall not rezone a shoreland-wetland zoning district, or portion thereof, if the proposed rezoning may result in a significant adverse impact upon any of the following:

1. Storm and flood water storage capacity;
2. Maintenance of dry season stream flow, or the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area, or the flow of groundwater through a wetland;
3. Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
4. Shoreline protection against soil erosion;
5. Fish spawning, breeding, nursery or feeding grounds;
6. Wildlife habitat; or
7. Areas of special recreational, scenic or scientific interest, including scarce wetland types.

(e) If the department determines that the proposed rezoning may have a significant adverse impact upon any of the criteria listed in par. d., the department shall notify the county zoning agency of its determination either prior to or during the public hearing held on the proposed amendment.

(f) As soon as possible after holding a public hearing, the county zoning agency shall submit its written findings and recommendations to the county board. Said findings shall outline the reason for the agency's recommendations. After receipt of the county zoning agency's findings and recommendations, the board may approve or disapprove of the proposed amendment.

(g) The county shall sent to the appropriate regional office of the department:

1. A copy of the county zoning agency's findings and recommendations on the proposed amendment within 10 days after the submission of those findings and recommendations to the county board; and

2. Written notice of the board's decision on the proposed amendment within 10 days after it is issued.

(h) If the county board approves of the proposed amendment and the department determines, after review as required by s. NR 115.17 (2)(c), that the county shoreland zoning ordinance if so amended would no longer comply with the requirements of s. 59.692, Stats., and this chapter, the department shall, after notice and hearing, adopt a complying ordinance for the county, under s. 59.692 (6), Stats.

(i) If the department has notified the county zoning agency that a proposed amendment may have a significant adverse impact upon any of the criteria listed in par. (d), that proposed amendment, if approved by the county board, shall not become effective until more than 30 days have elapsed since written notice of the county board's approval was mailed to the department, as required by par. (g). If within the 30-day period the department notifies the county board that the department intends to adopt a superseding shoreland zoning ordinance for the county under s. 59.592 (6), Stats., the proposed amendment shall not become effective while the ordinance adoption procedure is proceeding, but shall have its effect stayed until the s. 59.692 (6), Stats., procedure is completed or otherwise terminated.

**NR 115.09 Minimum lot sizes.** (1) GENERAL. (a) In calculating the area of a lot that is located wholly or partially in the shoreland area, counties may not include any land lying within a public right-of-way or any portion of the bed of a navigable body of water. The width of a lot shall be measured between the side lot boundaries on lines perpendicular to the mean bearing of the side lot boundaries at the lot's narrowest point.

(b) Counties may not allow trailers, buses, vans, mobile recreational vehicles, mobile homes, manufactured homes, park model homes or house boats to be used as a residence, regardless of whether or not the structure has wheels under it, unless the structure is a legal nonconforming structure or the lot meets applicable minimum lot size requirements for residential uses and all other applicable requirements in the county's shoreland zoning ordinance.

(c) A county may not permit more than one principal structure for use as a single family residence or duplex to be constructed or placed on a single lot.

(2) SINGLE FAMILY RESIDENCES. Except as provided in sub. (7) or (8), or where a variance has been issued by the county board of adjustment, a county may only permit the construction or placement of a new single family residence on a parcel of land wholly or partially in the shoreland area if the lot satisfies the following minimum requirements:

(a) Lots shall have a minimum area of 20,000 square feet and a minimum width of 100 feet.

(b) Lots abutting navigable waters shall have a minimum water frontage of 100 feet.

(3) DUPLEXES. Except as provided in sub. (7) or (8), or where a variance has been issued by the county board of adjustment, a county may only permit the construction or placement of a new duplex on a parcel of land wholly or partially in the shoreland area if the lot satisfies the following minimum requirements:

(a) Lots shall have a minimum area of 40,000 square feet and a minimum width of 200 feet.

(b) Lots abutting navigable waters shall have a minimum water frontage of 200 feet.

(4) MULTIPLE FAMILY RESIDENCES. Except as provided in sub. (7) or (8), or where a variance has been issued by the county board of adjustment, a county may only permit the construction or placement of new multiple family residences with 3 or more dwelling units per building on a parcel of land wholly or partially in the shoreland area if the lot satisfies the following minimum requirements:

(a) Lots shall have a minimum area of 60,000 square feet for each residential building plus an additional 20,000 square feet for each dwelling unit more than 3 dwelling units in the same residential building.

(b) Lots shall have a minimum width of 300 feet for each residential building plus an additional 100 feet for each dwelling unit more than 3 dwelling units in the same residential building.

(c) Lots abutting navigable waters shall have a minimum water frontage of 300 feet for each residential building plus 100 feet of water frontage for each dwelling unit more than 3 dwelling units in the same residential building.

(5) CAMPGROUNDS. Except as provided in sub. (7) or (8), or where a variance has been issued by the county board of adjustment, a county may only permit the construction of new campgrounds, expansion of existing campgrounds or the conversion of a campsite to residential use on a parcel of land wholly or partially in the shoreland area if the lot satisfies the following minimum requirements:

(a) Lots shall have a minimum area of 5 acres for the first 10 campsites plus an additional 7,000 square feet for each non-permanent campsite (occupied for 180 days or less by the same camping unit) and an additional 20,000 square feet for each permanent campsite (occupied for more than 180 days by the same camping unit or other structure).

(b) Lots abutting navigable waters shall have a minimum water frontage of 200 feet plus an additional 75 feet of water frontage for each campsite more than 10 campsites.

(c) Only camping units, such as tents, travel trailers and mobile recreational vehicles, may be used in non-permanent campsites (occupied for 180 days or less by the same camping unit).

(d) Except for legal nonconforming structures, a campsite may not be occupied continuously by the same camping unit or by a manufactured home, park model home or other structure for more than 180 days unless the campsite meets the minimum lot size requirements for single family homes in sub. (2) or is combined with other campsites to create a new lot that meets the minimum lot size requirements for single family homes in sub. (2).

(6) OTHER USES. For uses other than those specified in subs. (2) to (5), except as provided in sub. (8), or where a variance has been issued by the county board of adjustment, a county may only permit the construction or placement of a structure on a parcel of land wholly or partially in the shoreland area if the lot satisfies the following minimum requirements:

(a) Lots shall have a minimum area of 20,000 square feet and a minimum width of 100 feet.

(b) Lots abutting navigable waters shall have a minimum water frontage of 100 feet.

(7) PLANNED UNIT DEVELOPMENT. (a) Reduced lot sizes may be allowed under par. (b) if a proposed planned unit development will increase shoreland structure setbacks or

shoreland buffer areas, and restrict land use within conservation areas or include other design elements that will exceed the minimum standards required elsewhere in this chapter. Review and approval of planned unit developments shall be based on the following criteria:

1. Protection of floodplains, wetlands, steep slopes and shoreland buffer areas from land disturbances.
2. Preservation and maintenance of native plant communities and open space.
3. Maintenance or restoration of increased primary and secondary buffers adjacent to waterways and wetlands.
4. Preservation of scenic views and vistas.
5. Avoidance of new construction on prominent hilltops and ridges.
6. Protection of wildlife habitat.
7. Preservation of valuable historic, archaeological or cultural sites.
8. Protection of rural character.
9. Provision of reasonable contiguous conservation areas, common areas, active recreational areas, and pedestrian circulation systems.

(b) The lot sizes in a planned unit development may be reduced if the shoreland setback for structures and shoreland vegetative buffers are increased and if the development will restrict land use within conservation areas or include other design elements in order to achieve the objectives in par. (a). In no case shall the minimum lot sizes be reduced below the following standards:

1. For single family residences in a planned unit development, the minimum lot size for waterfront lots may be reduced to not less than 10,000 square feet with a minimum water frontage of 100 feet, and the minimum lot size for inland lots may be reduced to not less than 7,000 square feet with a minimum lot width of 50 feet.
2. For duplexes in a planned unit development, the minimum lot size for waterfront lots may be reduced to not less than 20,000 square feet with a minimum water frontage of 200 feet, and the minimum lot size for inland lots may be reduced to not less than 15,000 square feet with a minimum lot width of 100 feet.
3. For multiple family residences in a planned unit development, the minimum lot size for waterfront lots may be reduced to not less than 30,000 square feet with a minimum of 300 feet of water frontage for each residential building, plus an additional 10,000 square feet and 100 feet of frontage for each dwelling unit more than 3 dwelling units in the same residential building.
4. For multiple family residences in a planned unit development, the minimum lot size for inland lots may be reduced to not less than 20,000 square feet with a minimum of 150 feet of lot width for each residential building, plus an additional 7,500 square feet and 50 feet of lot width for each dwelling unit more than 3 dwelling units in the same residential building.
5. For campgrounds in a planned unit development, the minimum lot size for waterfront lots may not be reduced to not less than 5 acres for the first 10 campsites plus an additional 5,000 square feet for each non-permanent campsite (occupied for 180 days or less by the same camping unit) and an additional 10,000 square feet for each permanent campsite (occupied for

more than 180 days by the same camping unit). Lots abutting navigable waters shall have a minimum water frontage of 200 feet plus an additional 50 feet for each campsite more than 10 campsites.

(8) **PRE-EXISTING SUBSTANDARD LOTS.** A substandard lot that was a legal lot of record at the time that the ordinance or ordinance amendment that made the lot substandard took effect may be used as a building site if the proposed structure and any related land disturbing activity comply with all of the applicable requirements of the county shoreland zoning ordinance including the minimum standards in ss. NR 115.07 and NR 115.11 to NR 115.19.

**NR 115.11 Shoreland buffers – structural standards.** (1) **GENERAL.** Except as provided in subs. (2) to (4), or where a variance has been issued by the county board of adjustment, all buildings and other structures are prohibited within 75 feet landward of the ordinary high-water mark of navigable waters. Counties shall measure this shoreland buffer setback on a horizontal plane from the point of a structure that is nearest to the ordinary high-water mark, including roof overhangs. This general standard includes the requirement that counties shall enforce a setback of at least 75 feet from the ordinary high-water mark of navigable waters for all manufactured homes, park model homes, mobile recreational vehicles, buses, vans, house boats and ice fishing shanties that are parked or placed on shorelands, regardless of whether or not the structure has wheels under it.

(2) **EXEMPT STRUCTURES.** The following structures are exempt from the shoreland buffer setback required in sub. (1):

(a) *Water dependent structures.* Structures regulated under ch. 30, Stats., such as piers, rip-rap, biological shore erosion control structures and boat ramps, that have required state and federal permits or that meet statutory criteria or administrative rule standards and do not require a state or federal permit.

(b) *Fishing rafts.* Fishing rafts that are authorized on the Wolf River and Mississippi River under s. 30.126, Stats., and are pulled up onto the shore in the fall for winter storage but are moved onto the water in the spring. County shoreland zoning ordinances shall require property owners to locate these exempt structures within the viewing and access corridor that is allowed under s. NR 115.13 (3), wherever possible.

(c) *Agricultural fences.* Open wood or wire agricultural fences, without privacy slats or other solid surfaces that would block the view or flow of air through the fence and that meet the standards of chs. 30 and 90, Stats.

(e) *Satellite dishes and antennas.* Satellite dishes or antennas that are one meter or less in diameter and satellite earth station antennas that are two meters or less in diameter, provided that any dishes or antennas located within the shoreland buffer area are screened by native vegetation so that they are not visible from the water.

**NOTE:** Under 47 CFR 1.4000 and 25.104, state and local regulations that would impair the installation, maintenance or use of certain satellite dishes or antennas are prohibited.

(3) **PERMITTED STRUCTURES.** (a) The following structures may be permitted within the shoreland buffer setback required in sub. (1):

1. 'Walkways, stairways and lifts.' Walkways, stairways and lifts maybe permitted that are required on steep, rocky, unstable or wet sites in order to provide pedestrian access to navigable waters and that satisfy the following requirements:

a. Walkways, stairways and lifts shall not be placed in environmental sensitive areas.

b. If in the primary buffer, the walkways, stairways and lifts shall be located within the viewing and access corridor that is allowed under s. NR 115.13 (3), wherever possible.

c. Only one stairway or lift is allowed on a lot except where there is an existing stairway and the lift will be mounted onto, or is immediately adjacent to, the existing stairway.

d. Walkways, stairways and lifts shall be supported on piles or footings. Any filling, grading or excavation that is proposed for the installation of a walkway, stairway or lift shall meet the requirements of s. NR 115.15.

e. The width of the walkway, stairway or lift may not exceed 4 feet.

f. Landings, with one small bench per landing, located at a vertical interval of not less than 20 feet may be included in stairways if required for safety reasons, but landings may not exceed 40 square feet in size.

g. Canopies, roofs and walls are prohibited. Open railings may be included if required for safety reasons.

h. Vegetation that stabilizes the slope and screens the view of the structure from the water shall be preserved or established and maintained, if possible.

i. If the walkway, stairway or lift is stained or painted, the property owner shall use an earth-tone color that is visually inconspicuous when viewed from the water.

2. 'Signs.' Regulatory and informational signs maybe permitted at access sites and campgrounds that satisfy the following requirements:

a. Signs identifying access sites may be visible from the water and shall be no larger than necessary to accommodate the information that needs to be conveyed.

b. Signs that do not need to be visible from the water may be placed in the primary buffer if for public health, public safety or regulatory information only and shall be no larger than necessary to accommodate the information that needs to be conveyed. No commercial advertising or signs with general information about the property may be allowed within the primary buffer.

c. One multi-purpose two-sided informational sign may be placed in the secondary buffer. The sign shall be no larger than 24 square feet on one side, the overall structure size shall be the minimum necessary to support and shelter the sign, and the sign shall be visually unobtrusive with non-reflective materials that blend into the natural surroundings.

3. 'Water quality improvement structures.' New structures that are proposed to be built for the purpose of improving water quality, such as livestock runoff containment structures, may be permitted within the shoreland buffer area if all of the following criteria are satisfied:

a. The proposed structure complies with agricultural runoff management performance standards in ss. NR 151.01 to 151.095, or is a necessary component of a conservation plan or a water quality improvement plan approved by the department or the county land conservation department.

b. There is no alternative site outside of the shoreland buffer area for the construction of the structure or the alternative site outside of the shoreland buffer area is not economically viable



because it would cost 115% or more of the cost of the proposed construction within the shoreland buffer area.

c. The property owner preserves, or establishes, and maintains vegetation within 50 feet of the ordinary high-water mark of the navigable waters in the area between the new structure and the navigable waters, or to within 15 feet of the waterward side of the new structure in the area between the new structure and the navigable body of water if it is closer than 50 feet from the ordinary high-water mark.

4. 'Structural erosion control measures.' Structural erosion control measures, other than rip-rap or other water dependent erosion control structures exempt under sub. (2)(a), may be permitted above the ordinary high-water mark and within the shoreland buffer area if all of the following criteria are met:

a. The local zoning authority determines that structural erosion control measures are necessary to address significant on-going erosion that nonstructural erosion control measures cannot control.

b. The structural erosion control measure is constructed of natural materials and if stained or painted, the property owner shall use an earth-tone color that is visually inconspicuous when viewed from the water.

c. Vegetation that stabilizes the slope and screens the view of the structure from the water shall be preserved or established and maintained, if possible.

5. 'Marine fuel tanks.' Marine fuel storage tanks and dispensing systems that meet applicable standards in Comm 10.415 and 10.42, provided that any aboveground tanks located within the shoreland buffer area are screened by native vegetation so that they are not visible from the water. County shoreland zoning ordinances shall require property owners to locate these exempt structures within the viewing and access corridor that is allowed under s. NR 115.13 (3), wherever possible.

6. 'Parking at access sites.' Parking areas may be permitted at access sites if there is no other feasible location for parking on the property outside of the shoreland buffer area and if best management practices are employed to divert storm water runoff from the parking area to minimize the direct discharge of storm water into navigable waters.

7. 'Roads and driveways.' Roads and driveways may be permitted if necessary to access a bridge, culvert or ford allowed under sub. (2)(a). Best management practices shall be employed to divert storm water runoff from the road or driveway to minimize the direct discharge of stormwater runoff into navigable waters.

(b) The following structures shall be permitted within the shoreland buffer setback required in sub. (1):

1. *Reasonable accommodations for disabled persons.* In order to allow a disabled person who is entitled to reasonable accommodations under the Americans with Disabilities Act, the federal Fair Housing Act or the Wisconsin Open Housing Law to construct or expand a structure within the shoreland buffer area, counties shall issue either a building permit or a zoning permit to the disabled person. Counties may not issue variances to disabled persons unless the statutory variance criteria in s. 59.694 (7)(c), Stats., are satisfied for the lot in question. Fishing piers and other facilities for use by disabled persons may be permitted within the shoreland buffer area of resorts and campgrounds to provide disabled persons with an equal opportunity to participate in waterfront recreational activities provided that the facility is designed and located to minimize any adverse impact on water quality, fish and wildlife habitat and natural scenic beauty.

*2. Open-sided and screened structures.* Open-sided and screened structures, such as gazebos, decks, patios, and screen houses, shall be permitted within the shoreland setback area that satisfy the requirements of s. 59.692 (1v), Stats.

**NOTE:** The Department interprets the provision in s. 59.692 (1v)(b), Stats., that limits the “total floor area of all of the structures in the shoreland setback area of the property” to 200 square feet to mean that all structures that are not otherwise exempt from shoreland setback requirements must be included in calculating the total floor area of existing structures, in order to determine whether special zoning permission may be granted to build a gazebo, deck or patio within the shoreland setback area. The statute specifically excludes boathouses from this calculation. However, the Department believes that if a deck has been placed on the roof of a boathouse, the area of the deck should be included in calculating the total floor area of existing structures. The Department also believes that the area occupied by walkways, stairways and lifts in the shoreland setback area is only required to be included in calculating the total area of all structures in the shoreland setback area under s. 59.692 (1v)(b), Stats., if the walkway, stairway or lift is not necessary to provide access to navigable waters because the site is steep, rocky, unstable or wet or is otherwise not considered an exempt structure because it does not meet the requirements in s. NR 115.09 (2)(c) 1 to 8. All structures in the shoreland setback area, other than boathouses and exempt walkways, stairways and lifts, are counted in calculating the “total floor area of all of the structures in the shoreland setback area of the property,” including nonconforming structures and structures for which a variance has been granted.

(4) **SETBACK REDUCTION PROCESS.** (a) If a complaint building location for a principal residential structure is not available on a lot, a reduced shoreland buffer setback for a principal residential structure may be permitted if:

1. The lot is at least 7,000 square feet in area.
2. The lot is a legal lot of record.
3. a. The lot is in separate ownership from abutting lots, or

b. The lot by itself or in combination with an adjacent lot or lots under common ownership in an existing subdivision has at least 5,000 feet of net project area. Adjacent substandard lots in common ownership may only be sold or developed as separate buildable lots if each of the lots meets the minimum lot size requirements in s. NR 115.09.

(b) If a lot meets all the requirements of par. (a), the following process may be used to calculate a reduced shoreland buffer setback for a principal residential structure:

1. First, the roadway setback shall be reduced as much as is allowed by the governmental entity that has jurisdiction over the street or road.
2. Second, the setback from the ordinary high-water mark of navigable waters may be reduced in order to create a 30-foot deep building location, provided that the setback from the ordinary high-water mark may not be less than the depth of the primary buffer.

(c) Counties may only apply a reduced shoreland buffer setback that is calculated under par. (b) to residences, attached garages and driveways. The proposed footprint of the residence, including any attached garage, may not exceed 1,500 square feet.

(d) Counties shall require all property owners who are issued a permit to build or place a residence at a reduced setback under par. (b) to comply with the mitigation standards of s. NR 115.19.

**NR 115.13 Shoreland buffers – vegetation standards.** (1) **GENERAL.** Except as provided in subs. (3) to (8), or where a variance has been issued by the county board of

adjustment, counties shall apply the vegetative buffer requirements in this section to all shoreland lots where the construction of a new principal structure or the expansion of an existing principal structure is proposed in addition to any applicable mitigation requirements in s. NR 115.19. The vegetative buffer requirements in this section are only applicable to the reconstruction of nonconforming structures if required by a county ordinance in compliance with the mitigation provisions in s. NR 115.19.

(2) VEGETATIVE BUFFERS. Except as provided in sub. (1), property owners shall preserve, or establish, and maintain the following vegetative buffers:

(a) *Primary buffer.* 1. Except for a viewing and access corridor allowed under sub. (3), a buffer of native shoreland vegetation shall be preserved, or established, and maintained, parallel to the ordinary high-water mark, extending a minimum of 50 feet inland from the ordinary high-water mark of navigable waters.

2. If any vegetation is removed from any area of the primary buffer other than by selective cutting in the viewing and access corridor or as authorized under subd. 3, the property owner shall be required to replace the removed vegetation by planting native vegetation in the same area.

3. Within the primary buffer and outside of the viewing and access corridor, vegetation removal or destruction is prohibited, with the following exceptions:

a. Exotic or invasive species may be removed.

b. Diseased vegetation may be removed.

c. Trees or shrubs severely damaged by high winds may be removed.

d. Trees or shrubs that pose an imminent safety hazard may be removed.

e. Lawns and other areas where native vegetation was removed, prior to the adoption of the shoreland zoning ordinance amendment requiring a primary buffer, may be maintained, but not expanded, until compliance with mitigation requirements of s. NR 115.19 are required.

(b) *Secondary buffer.* A buffer of other ground layer vegetation, such as turf grass, shall be preserved, or established, and maintained, parallel to the ordinary high-water mark of navigable waters, extending a minimum of 25 feet inland from the inland edge of the primary buffer. Removal of trees and shrubs may be allowed in the secondary buffer.

(c) *Beyond the secondary buffer.* Beyond the secondary buffer, any vegetation removal shall be governed by consideration of the effect on water quality and sound forestry and soil conservation practices, and designed in a manner to minimize erosion, sedimentation and impairment to fish and wildlife habitat.

(3) VIEWING AND ACCESS CORRIDOR. (a) Counties may allow selective cutting of vegetation in a single corridor extending through the primary buffer to the waterfront, in order to provide a filtered view of the water from the principal structure on the lot and pedestrian access to the waterfront, while retaining sufficient vegetation to screen development from the water, provided that the width of the corridor does not exceed the following standards:

1. For single-family residences and duplexes, the width of the viewing and access corridor may not exceed 30% of the lot's water frontage or 30 feet, whichever is less.

2. For multiple-family residences, the viewing and access corridor may be one single corridor or multiple corridors provided that the total width of all viewing and access corridors does not exceed 30% of the lot's water frontage or 90 feet, whichever is less.

3. For campgrounds and other uses, the viewing and access corridor may be one single corridor or multiple corridors provided that the total width of all viewing and access corridors does not exceed 30% of the lot's water frontage.

(b) Counties shall require property owners to locate the viewing and access corridor adjacent to the designated aquatic plant removal area allowed under s. NR 109.06 (2)(a) 1., wherever possible.

(c) Counties shall require property owners to preserve, or establish, and maintain ground layer vegetation, such as turf grass, in the viewing and access corridor, except for areas where walkways, stairways or lifts are allowed under s. NR 115.11 (2)(i).

(4) AGRICULTURAL PRACTICES AND FARM DRAINAGE DITCHES. (a) Land used for non-structural agricultural practices is exempt from the vegetative buffer requirements in sub. (2). Aquaculture ponds, if declared navigable, and horticulture facilities are not exempt.

**NOTE:** The Department of Natural Resources plans to develop standards for agricultural buffers in the shorelands of navigable bodies of water as part of the process to revise ch. NR 151.

(b) The land adjacent to farm drainage ditches with no previous stream history is exempt from county shoreland zoning regulation if the land adjacent to the farm drainage ditch is maintained in non-structural agricultural use, under s. 281.31 (2m), Stats. If land adjacent to a farm drainage ditch is not exempt from county shoreland zoning regulation, the removal of trees and shrubs within the primary buffer along the farm drainage ditch may be permitted by the county if the removal is part of drainage ditch maintenance work that is conducted consistent with the requirements of ch. 88, Stats., and if the tree and shrub removal is limited to the minimum amount necessary to maintain the farm drainage ditch. Land adjacent to farm drainage ditches shall be vegetated and maintained with ground layer vegetation, such as turf grass.

(5) FOREST MANAGEMENT ACTIVITIES. Forest management activities are exempt from the vegetative buffer requirements in sub. (1) if the property owner, or an agent or contractor of the owner, implements the voluntary forestry best management practices found in "Wisconsin's Forestry Best Management Practices for Water Quality, PUB FR-093 2003," published by the department in March 1995 and reprinted in May 2003.

**NOTE:** Copies of "Wisconsin's Forestry Best Management Practices for Water Quality, PUB FR-093 2003," are available for inspection at the offices of the Department of Natural Resources, the Secretary of State, and the Revisor of Statutes. Copies may be obtained from the Wisconsin Department of Natural Resources, Division of Forestry, 101 S. Webster Street, P.O. Box 7921, Madison, WI 53707-7921. Property owners may seek advice on implementation of Forestry "BMPs" from county foresters and foresters employed by the Department of Natural Resources.

(6) NATURAL AREAS MANAGEMENT ACTIVITIES. (a) Natural areas management activities are exempt from the vegetative buffer requirements in sub. (2) if carried out consistent with a department-approved management plan that is referenced in county records or filed with the county, as specified in the county's shoreland zoning ordinance.

(b) Natural areas management activities requiring removal or destruction of vegetation may be permitted by the county if carried out consistent with a management plan that advances the purposes of shoreland zoning, was developed by a professional natural resource manager and is filed with the county, as specified in the county's shoreland zoning ordinance.

(7) **DAM AND LEVEE MAINTENANCE ACTIVITIES.** Dam and levee maintenance activities are exempt from the vegetative buffer requirements in sub. (2) if carried out consistent with the requirements of s. 31.18, Stats. Earthen dam embankments shall be vegetated and maintained with ground layer vegetation, such as turf grass.

(8) **PRE-EXISTING LOTS AND NEW OR EXPANDED NONCONFORMING STRUCTURES.** A substandard lot that is at least 7,000 square feet in area and was a legal lot of record at the time that the ordinance or an ordinance amendment made the lot substandard, and a lot that satisfies the requirements in s. NR 115.09 may be developed, even though the lot lacks sufficient area to completely satisfy the vegetative buffer requirements in this section. The primary buffer depth may be reduced if necessary to allow 15 feet of secondary buffer around the footprint of a principal structure that is constructed with a reduced shoreland structure setback calculated in compliance with s. NR 115.11 (3) or expanded in compliance with s. NR 115.17 (3)(c). However, the primary buffer depth for a new or expanded principal structure may not be reduced to less than 35 feet unless a variance has been granted.

**NR 115.15 Land disturbing activities.** (1) **GENERAL.** At a minimum, each county shall adopt a provision in its shoreland zoning ordinance that provides that land disturbing activities are allowed in shorelands only if done in compliance with the shoreland buffer provisions that are required under ss. NR 115.11 and NR 115.13, and the requirements of ch. 30, Stats., ch. NR 216, and other state and federal laws, where applicable, and only if done in a manner designed to minimize erosion, sedimentation and impairment of fish and wildlife habitat.

(2) Counties shall implement this provision by requiring a permit for land disturbing activities in shoreland areas if:

(a) 1,000 square feet or more of land disturbing activity occurs wholly or partially within 75 feet of the ordinary high-water mark of navigable waters.

(b) 2,000 square feet or more of land disturbing activity occurs wholly or partially between 75 feet and 300 feet from the ordinary high-water mark of navigable waters.

(3) Counties may exempt from a county permit requirement any land disturbing activity for which a permit has been issued by the department under ch. 30, Stats., or ch. NR 216.

**NOTE:** Counties also have the option of becoming an authorized local program under s. NR 216.415 for construction site stormwater discharge permits or s. NR 341.02 (3) for grading on the bank of a navigable waterway in conjunction with the issuance of county permits.

**NR 115.17 Nonconforming uses and structures.** (1) **NONCONFORMING USES.** Under s. 59.69 (10) and s. 59.692 (2)(a), Stats., a county shoreland zoning ordinance may not prohibit the continuance of the lawful use of any building or premises for any trade or industry for which such building or premises is used at the time that the ordinance took effect, but the alteration of, or addition to, any existing building or other structure used for any nonconforming trade or industry may be regulated or prohibited. Counties may also allow the continuation of other types of nonconforming uses in shorelands, subject to the limitations on nonconforming structures in sub. (2). However, under s. 59.69 (10), Stats., counties shall require any future use of the building and premises where a nonconforming use was located to conform to the county's shoreland zoning ordinance if a nonconforming use is discontinued for a period of 12 months.

(2) **NONCONFORMING ACCESSORY STRUCTURES.** Counties shall regulate all nonconforming accessory structures in the shoreland buffer area as follows:

(a) Counties may allow ordinary maintenance and repair of nonconforming accessory structures located wholly or partially in the shoreland buffer area.

(b) Counties may not allow structural alteration of a nonconforming accessory structure located wholly or partially in the shoreland buffer area unless the mitigation requirements in s. NR 115.19 (2) are met.

(c) In the absence of the issuance of a variance by the county board of adjustment, the expansion or reconstruction of a nonconforming accessory structure located wholly or partially in the shoreland buffer area is prohibited.

(3) NONCONFORMING PRINCIPAL STRUCTURES. Counties shall regulate all nonconforming principal structures in the shoreland buffer area as follows:

(a) *Ordinary maintenance and repair.* Counties may allow ordinary maintenance and repair of nonconforming principal structures located wholly or partially in the shoreland buffer area.

(b) *Structural alteration.* Counties may not allow structural alteration of a nonconforming principal structure located wholly or partially in the shoreland buffer area unless all of the applicable mitigation requirements in s. NR 115.19 are met.

(c) *Expansion.* 1. In the absence of the issuance of a variance by the county board of adjustment, the county may not allow the expansion of a nonconforming principal structure that is located wholly or partially within 50 feet of the ordinary high-water mark of navigable waters.

2. Counties may allow an expansion of a nonconforming principal structure that is entirely set back a minimum of 50 feet from the ordinary high-water mark of navigable waters if all of the following conditions are met:

- a. The lot is at least 7,000 square feet.
- b. There is not a compliant building location on the lot.
- c. The footprint of the nonconforming principal structure with the new addition will not exceed 1,500 square feet.
- d. The existing foundation of the nonconforming principal structure is not removed, replaced, reconstructed, improved or structurally altered. Cracks in the foundation may be repaired and waterproof coating may be added to an existing foundation.
- e. If the expansion is vertical, the expansion is subject to any height restrictions that apply.
- f. If the expansion is horizontal, the expansion is on the side of the nonconforming principal structure furthest away from the ordinary high-water mark of the navigable waters.
- g. All of the applicable mitigation requirements in s. NR 115.19 are met.

(d) *Reconstruction.* 1. Counties may allow reconstruction of nonconforming principal structures that is located wholly or partially in the shoreland buffer area if all of the following conditions are met:

- a. The lot is at least 7,000 square feet.
- b. The nonconforming principal structure is reconstructed on the existing foundation.

c. The existing foundation of the nonconforming principal structure is not removed, replaced, reconstructed, improved or structurally altered. Cracks in the foundation may be repaired and waterproof coating may be added to an existing foundation.

d. The height of the new nonconforming principal structure may not exceed the pre-existing structure, except for an increase in height that is necessary to convert a flat roof to a pitched roof.

e. All of the applicable mitigation requirements in s. NR 115.19 are met.

2. Reconstructed principal structure located wholly or partially within 50 feet of the ordinary high-water mark of navigable waters may not be expanded. Counties may allow the reconstruction and expansion of a nonconforming principal structure that is entirely set back a minimum of 50 feet from the ordinary high-water mark of navigable waters if all of the conditions in subd. 1. and par. (c) 2. are met.

(4) LIMITATIONS ON ORDINARY MAINTENANCE AND REPAIR AND ADDITIONAL LIMITATIONS ON STRUCTURAL ALTERATIONS, EXPANSIONS OR RECONSTRUCTION. Counties may impose limitations on the ordinary maintenance and repair of nonconforming principal structures and accessory structures in their shoreland zoning ordinances, may impose limitations on structural alterations to nonconforming structures in addition to the criteria in par. (b), may impose limitations on the expansion of nonconforming structures in addition to the criteria in par. (c) 2., and may impose additional limitations on, or choose not to allow reconstruction under par. (d). If a county chooses to limit the cost of allowable structural alterations, ordinary maintenance and repair, or expansions to costs that do not exceed 50% of the value of the pre-existing nonconforming structure over the life of the structure, the county shall include the retail value of any donated materials and any donated labor in calculating the cost of the work.

(5) CONDITIONAL USE PERMITS. Counties have the option of requiring the issuance of a conditional use permit instead of a building permit or zoning permit for structural alterations, expansions and reconstructions of nonconforming principal structures provided that the requirements of this section are satisfied. However, counties may not substitute a conditional use permit process for the variance process in situations where a variance is required under this chapter.

**NR 115.19 Mitigation requirements.** (1) GENERAL MITIGATION REQUIREMENTS. In order to minimize the adverse impact of proposed and existing construction within shorelands on the public interest in navigable waters, counties shall require property owners to implement the following mitigation measures as a condition of granting a permit that authorizes construction, expansion, structural alteration or reconstruction of a structure within the shoreland area.

(2) STRUCTURAL ALTERATIONS. As a condition of a permit to structurally alter accessory structures and principal structures in the shoreland area, the structure is visually inconspicuous or will be rendered so through the planting and maintenance of vegetation.

(3) CONSTRUCTION, EXPANSION OR RECONSTRUCTION. Permits to construct, expand or reconstruct principal structures in the shoreland area, shall require the following conditions:

(a) The color of a new, expanded or reconstructed principal structure is earth-tone.

(b) The new, expanded or reconstructed principal structure is visually inconspicuous or will be rendered so through the planting and maintenance of vegetation.

(c) If the new, expanded or reconstructed structure is a principal structure and if the property has a private onsite wastewater treatment system, the system shall be inspected and upgraded, if needed, to bring it into compliance with Ch. Comm 83.

(d) At least 80% of the post-construction stormwater runoff resulting from impervious surfaces on the lot shall be controlled. To achieve this performance standard:

1. For projects that have a total land disturbance of one acre or more, the property owner shall implement best management practice to control 80% of the post-construction stormwater runoff resulting from impervious surfaces and meet the stormwater performance standards in ss. NR 151.11 and 151.12 for stormwater discharges.

2. For projects that have a total land disturbance of less than one acre, the property owner shall:

a. Develop a site-specific stormwater management plan and implement and maintain the best management practices specified in the stormwater management plan. The stormwater management plan shall, to the maximum extent practicable, direct runoff from impervious surfaces onto pervious surfaces. Examples may include directing downspouts onto lawns or rain gardens and away from pavement or driveways, and avoidance of piping or channelizing flow from impervious surfaces into waters of the state; or

b. Submit documentation to the county from a registered professional engineer or landscape architect certifying that at least 80% of the stormwater runoff from impervious surfaces on the lot does not enter navigable waters or wetlands, and is controlled on-site without additional control measures.

**Note:** The department maintains a list of technical standards that it has determined adequate and effective for designing best management practices to control erosion and sediment runoff. Contact the department stormwater program in the Bureau of Watershed Management at (608) 267-7694 to obtain a copy of this list or visit the department's stormwater webpage at [www.dnr.wi.gov/org/water/nps/stormwater.htm](http://www.dnr.wi.gov/org/water/nps/stormwater.htm)

(e) If the lot with the new or expanded principal structure is located wholly or partially in the shoreland buffer area, the property owner shall preserve, or restore, and maintain a vegetative buffer on the property where the construction, expansion or reconstruction of a structure within the shoreland area is proposed, in compliance with the vegetative buffer standards in the county's shoreland zoning ordinance that are generally applicable to new development, expansions and reconstruction within the shoreland buffer area, as required in s. NR 115.13.

(f) If the lot with the reconstructed structure is located wholly or partially in the shoreland buffer area, the property owner shall:

1. Preserve, or restore, and maintain a vegetative buffer on the property where the construction, expansion or reconstruction of a structure within the shoreland area is proposed, in compliance with the vegetative buffer standards in the county's shoreland zoning ordinance that are generally applicable to new development, expansions and reconstruction within the shoreland buffer area, as required in s. NR 115.13; or

2. Remove all nonconforming accessory structures from the shoreland buffer area of the property on which the new, expanded or reconstructed structure is proposed.

(2) ADDITIONAL MITIGATION REQUIREMENTS. In addition to the mitigation required under sub. (1), counties may also require property owners to implement additional mitigation



measures as a condition of granting a permit that authorizes the construction, expansion, structural alteration or reconstruction of a structure within the shoreland buffer area.

(3) MITIGATION DOCUMENTATION. The property owner shall record an affidavit at the county register of deeds office that gives notice of the details of the required mitigation practices that shall be implemented and maintained on the property.

**NR 115.21 Adoption of administrative and enforcement provisions.** The shoreland ordinance adopted by each county shall provide for:

(1) The appointment of an administrator and such additional staff as the workload may require.

(2) The creation of a planning and zoning agency, as authorized by s. 59.69, Stats., a board of adjustment, as authorized by s. 59.694, Stats., and a county planning agency, as defined in s. 236.02 (1), Stats., and required by s. 59.692 (3), Stats.

(3) A system of permits and fees for all new development, construction, reconstruction, expansion, structural alteration or moving of buildings and other structures. A copy of all applications shall be required to be filed in the office of the county zoning administrator.

(4) Regular inspection of permitted work in progress to insure conformity of the finished structures with the terms of the ordinance.

(5) A variance procedure which authorizes the board of adjustment to grant such variance from the terms of the ordinance as will not be contrary to the public interest where, owing to special conditions on the applicant's property, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, so that the spirit of the ordinance shall be observed and substantial justice done, and which also provides that the board of adjustment may only grant the minimum relief necessary to avoid unnecessary hardship.

(6) A conditional use procedure for uses presenting special problems. However, counties may not substitute a conditional use permit process for the variance process in situations where a variance is required under this chapter.

(7) The county shall keep a complete record of all proceedings before the board of adjustment, and the planning and zoning agency.

(8) Written notice and a copy of all application forms and attachments submitted by the applicant shall be sent to the appropriate regional office of the department by the county at least 10 days prior to hearings on proposed variances, conditional uses, appeals for map or text interpretations, and map or text amendments, and submission to the same office of the department of copies of decisions on variances, conditional uses, appeals for map or text interpretations, and map or text amendments within 10 days after they are granted or denied.

(9) Mapped zoning districts and the recording, on an official copy of such map, of all district boundary amendments.

(10) The establishment of appropriate penalties for violations of the requirements of the ordinance, including at a minimum forfeitures of not less than \$10 and not more than \$1,000 per violation, or twice the amount of any permit fee that the violator did not, but should have, paid, whichever is more. Each day of continued violation is a separate offense. Compliance with the ordinance shall also be enforceable by the use of injunctions to prevent or abate a violation, as provided in s. 59.69 (11), Stats.

(11) The prosecution of violations of the ordinance.

(12) The procedure that is to be followed to process applications from persons who claim to be disabled and who are requesting that they be allowed to take action that would otherwise be prohibited under the shoreland zoning ordinance because of their disability. In order to allow a disabled person who is entitled to reasonable accommodations under the Americans with Disabilities Act, the federal Fair Housing Act or the Wisconsin Open Housing Law to take action that would otherwise violate the requirements of the county's shoreland zoning ordinance, counties shall issue an administrative permit to the disabled person. Counties may not issue variances to disabled persons unless the statutory variance criteria in s. 59.694 (7)(c), Stats., are satisfied by the lot in question.

**NOTE:** The Americans with Disabilities Act ("ADA"), 42 USC 12101 to 12213, requires states and local units of government to take action to avoid discriminating against disabled persons in their employment practices, in public accommodations and in all programs, activities and services provided by the governmental entity. The federal Fair Housing Act, 42 USC 3601 to 3631, and the Wisconsin Open Housing Law, s. 106.50, Stats., require local governments to make "reasonable accommodations" in the application of zoning ordinances in order to provide equal opportunity to housing to disabled persons. However, the issuance of a variance is not the appropriate mechanism for granting "reasonable accommodations" that are required because of a person's disabilities because, under Wisconsin law, variances can only be granted based on the unique characteristics of the property.

**NR 115.23 Department duties.** (1) ASSISTANCE TO COUNTIES. To the full extent of its available resources, the department shall provide advice and assistance to counties in the development, adoption, administration and enforcement of their shoreland zoning ordinances, consistent with the shoreland protection objectives found in s. 281.31, Stats. As a part of this effort, the department shall prepare a model shoreland zoning ordinance which counties may use in meeting the requirements of s. 59.692, Stats., and this chapter.

(2) REVIEW AND APPROVAL OF SHORELAND ZONING ORDINANCES. (a) Compliance with the requirements of s. 59.692, Stats., will be determined by the department by comparing the shoreland zoning ordinance that has been enacted by a county with the minimum standards for shoreland regulation contained in this chapter. The department shall issue a certificate of compliance when a county has, in the opinion of the department, complied with s. 59.692, Stats., this chapter and amendments to this chapter.

(b) The department shall periodically reevaluate shoreland zoning ordinances to ascertain their continuing compliance with this chapter. A county shall keep its shoreland zoning ordinance current, effective and workable to retain its status of compliance.

(c) The department shall review all proposed amendments to shoreland wetland zoning districts pursuant to s. NR 115.07 (5), to ensure that an ordinance which is amended as proposed will retain its status of compliance with s. 59.692, Stats., and this chapter.

(3) DETERMINATION OF NONCOMPLIANCE. (a) Counties that do not have a shoreland zoning ordinance in effect shall be deemed to be in noncompliance with s. 59.692, Stats., and this chapter. The department shall, pursuant to s. 59.692 (6), Stats., adopt an ordinance, after notice and hearing, if a county fails to adopt a complying shoreland zoning ordinance within 6 months after taking one or more of the following steps:

1. Proceeding on its own with the drafting and enactment of a shoreland zoning ordinance.

2. Contracting with a consultant to draft a shoreland zoning ordinance.

3. Cooperating with the staff of the department to draft the shoreland zoning ordinance to be enacted by the county. All costs for such action by the department shall be borne by the noncomplying county.

(b) Counties that have shoreland zoning ordinances that do not meet the minimum standards contained in this chapter shall be deemed to be in noncompliance with the requirements of s. 59.692, Stats.

1. If a county fails to modify its ordinance to meet the minimum standards in this chapter within 2 years after [Revisor: insert the effective date of this rule order], unless the department grants an extension in response to an explanation from the county as to why more time is needed, the department shall adopt a superseding ordinance amendment for the county, after notice and hearing, pursuant to s. 59.692 (6), Stats.

2. If a county fails to modify its ordinance to meet the minimum standards in this chapter within 6 months after a notification of noncompliance, unless the department grants an extension in response to an explanation from the county as to why more time is needed, the department shall adopt a superseding ordinance amendment for the county, after notice and hearing, pursuant to s. 59.692 (6), Stats.

(4) MONITORING. It is the responsibility of the department, to aid in the fulfillment of the state's role as trustee of its navigable waters, to monitor the administration and enforcement of shoreland zoning ordinances. In so doing, the department:

(a) Shall review decisions granting conditional uses, variances and appeals to ensure compliance with the county shoreland zoning ordinance and this chapter;

(b) May appeal the actions of county zoning officials to county boards of adjustment, under s. 59.694 (4), Stats.; and

(c) May seek court review of the decisions of boards of adjustment, under s. 59.694 (10), Stats., and under Wisconsin common law.